

Application No. 10/800,746
Amendment dated October 18, 2005
Reply to Office Action of August 11, 2005

- REMARKS/ARGUMENTS -

Claims 6 to 11 are pending in the application.

Claim rejections – 35 USC § 103

With respect to the rejection of claims 6 to 11 as being unpatentable over Berger (US 5,699,915) in view of Higgins (US 4,050,219), reconsideration by the Examiner is respectfully requested on the following grounds.

As stated by the Examiner, the test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. References are evaluated by what they suggest to one versed in the art.

It is submitted that Berger would not suggest to one versed in the art that the wrap material could be replaced by a bag, as set forth in Higgins. Berger states (see col. 1, lines 45-60) that prior peat moss packaging is done in small bags and recognizes that such a shipping method produces a large quantity of discarded bags after the peat moss is used. Berger also states that shipping of peat moss in large containers must be effected rapidly to avoid bacterial decomposition of the peat moss. The object of the invention in Berger (see col. 1, line 63 to col. 2, line 2) is thus to significantly increase the quantity of peat moss per unit of shipment while preventing bacterial decomposition and minimizing the quantity of discarding plastic material. Yet, while Berger was clearly aware that small bags were used in the prior art to package small quantities of peat moss, Berger described and claimed throughout the entire specification only the use of wrapping material to package his palletized peat moss. To one skilled in the art, such a break with the packaging material identified as being previously used (i.e. bags, albeit small ones) points away from the use of large bags, such as the bags disclosed in Higgins to package the palletized peat moss. Thus, there is nothing in Berger or in the common knowledge of the art that would suggest using a bag, such as taught in Higgins, to package the compressed palletized peat moss.

It is also submitted that Higgins would not suggest to one versed in the art that the process and bags could be used to package compressed peat moss. Higgins teaches a bagging machine for a typical loaded pallet. The Figures in Higgins show the load as a straight well defined prism, suggesting rigidity (see Figures 1, 2 and 19). No mention is made of a fragility of

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the load to be packaged or of compressing means that would be required to produce a compressed palletized body of compressible material. Thus, one skilled in the art would understand that the load in Higgins is intended to be any type of load usually bagged in machines of this type according to the prior art, that is, rigid loads which maintain their structural integrity on their own. Compressed palletized peat moss is not a product that is known in the art to be packageable in bags, and one skilled in the art would be aware that compressed palletized peat moss behaves very differently from a rigid load (see above). As such, there is nothing in Higgins or in the common knowledge of the art that would suggest using the bags and/or process described in the specification with a palletized compressed peat moss body, as taught by Berger.

Accordingly, it is submitted that one skilled in the art would have no motivation to combine Higgins and Berger to produce the claimed invention, as neither the references nor the knowledge of the art suggest such a combination.

Moreover, to establish obviousness there must be a reasonable expectation of success. One skilled in the art would be aware that a body of palletized compressed peat moss is fragile, i.e. it retains its structural integrity only for a short time and can easily crumble, if not handled appropriately. Care must be exercised in packaging such a material. Moreover, as pointed out in the specification of the present invention (see paragraph 0028), the highly compressible peat moss must be maintained under a significant compression force by the packaging material in order to retain its compressed form. In addition, the transition point between the soft, compressed peat moss and the solid pallet creates a stress concentration on the packaging material which can induce tearing, if the material is not sufficiently resistant. By comparison a standard, solid palletized load is rigid. It retains its structural integrity on its own and, as such, the packaging material needs only to maintain a minimal compression force thereon to retain the load in place. Thus, one skilled in the art would not expect a bag adapted to cover a solid load to be able to produce sufficient compression forces to maintain compressed peat moss in its compressed form, or to be resistant enough to resist tearing at the transition between the compressed peat moss and the pallet. In addition, one skilled in the art would expect that a bag and packaging process adapted for a solid load which maintains its structural integrity upon handling would crumble a fragile body of compressed peat moss instead of successfully packaging it. Accordingly, one skilled in the art would not have a reasonable expectation of success for the use of Higgins' bags

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on Berger's palletized compressed peat moss. The skilled artisan would not expect a combination of Higgins and Berger to work.

Thus, the Applicants submit that the two cited references cannot be combined to reject claims 6 to 11 and, as such, claims 6 to 11 comply with 35 USC § 103.

It is submitted, therefore, that the claims are in condition for allowance. Reconsideration of the Examiner's rejections is respectfully requested. Allowance of claims 6 to 11 at an early date is solicited.

In the event that there are any questions concerning this amendment or the application in general, the Examiner is respectfully urged to telephone the undersigned so that prosecution of this application may be expedited.

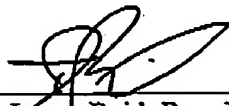
Respectfully submitted,

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By:

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Date


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